MONTANA LEGISLATIVE HISTORY

Chapter 353 ■ 2003

Bill H 134 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-14	___C	Hearing Date(s)	3-11	___C
	1-22	___C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	1-22	___C	DATE OUT	3-11	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

House Floor

2nd reading passed 1-29
3rd reading passed 1-30

2nd reading Senate amendments concurred 4-7
3rd reading Senate amendments passed 4-8

Senate Floor

2nd reading concurred 3-14
3rd reading concurred 3-15

Date Compiled: 1-24-16
Compiled by: rs

2/10	TABLED IN COMMITTEE		
3/29	MISSED DEADLINE FOR APPROPRIATION BILL TRANSMITTAL		

HB 134 INTRODUCED BY WEISS *LC0127 DRAFTER: MACMASTER*

REVISE DISPOSITION OF FUNDS HELD BY OR FOR STATE PRISON INMATES

BY REQUEST OF DEPARTMENT OF CORRECTIONS

12/20	INTRODUCED		
12/27	REFERRED TO JUDICIARY		
1/14	HEARING		
1/22	COMMITTEE EXECUTIVE ACTION—BILL PASSED	18	0
1/23	FISCAL NOTE RECEIVED		
1/23	COMMITTEE REPORT—BILL PASSED		
1/24	FISCAL NOTE PRINTED		
1/29	2ND READING PASSED	98	1
1/30	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
1/31	REFERRED TO JUDICIARY		
3/05	HEARING		
3/11	HEARING		
3/12	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	9	0
3/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED ON VOICE VOTE	47	0
3/15	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/07	2ND READING SENATE AMENDMENTS CONCURRED	95	2
4/08	3RD READING PASSED AS AMENDED BY SENATE	99	1
4/08	SENT TO ENROLLING		
4/09	RETURNED FROM ENROLLING		
4/10	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
4/17	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 353		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

HB 135 INTRODUCED BY J. ANDERSEN *LC0690 DRAFTER: MCCLURE*

CLARIFY USE OF TUITION FUND FOR SCHOOLS

12/20	INTRODUCED		
12/27	REFERRED TO EDUCATION		
1/02	FISCAL NOTE REQUESTED		
1/15	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE PRINTED		
1/17	HEARING		
1/27	COMMITTEE EXECUTIVE ACTION—BILL PASSED	14	0
1/27	COMMITTEE REPORT—BILL PASSED		
2/01	2ND READING PASSED	94	6
2/03	3RD READING PASSED	93	6
	TRANSMITTED TO SENATE		
2/04	REFERRED TO EDUCATION AND CULTURAL RESOURCES		
3/07	HEARING		
3/10	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	9	0
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED ON VOICE VOTE	50	0
3/12	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/12	SENT TO ENROLLING		
3/13	RETURNED FROM ENROLLING		
3/14	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
3/26	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 130		
	EFFECTIVE DATE: 3/26/2003 - ALL SECTIONS		

HOUSE BILL NO. 134

INTRODUCED BY S. WEISS

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DISPOSITION OF FUNDS HELD BY OR FOR THE BENEFIT OF STATE PRISON INMATES; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 53-1-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; [section 3]; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana

to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 2. Section 53-1-107, MCA, is amended to read:

"53-1-107. ~~Limits on inmate~~ Inmate financial transactions and trust account system. (1) An inmate of ~~the Montana~~ a state prison ~~in Deer Lodge or the women's prison in Billings~~, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v), shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. ~~If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration.~~ The department may charge an inmate a minimum fee, not to exceed ~~$1.60~~ $2 each month, to administer the inmate's account.

(2) The department may, consistent with administrative rules adopted by the department, use funds in an inmate's account to:

(a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;

(b) satisfy court-ordered child support;

(c) satisfy court-ordered fines, fees, or costs; and

(d) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.

~~(2)~~(3) (a) Money ~~forfeited~~ taken under subsection ~~(1) to~~ (2) for the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance program in the department of justice for deposit

in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If ~~the inmate's sentence did not provide for the payment of restitution or if~~ there is a balance of money in the inmate's account after ~~restitution has been paid~~ payments under subsection (2)~~(a), money forfeited under subsection (1) must be applied to the inmate's costs of incarceration~~, the department may allow the balance to accumulate in a savings subaccount for the inmate.

~~(3)~~(4) The department shall adopt rules establishing ~~criteria for forfeiture~~ the prison inmate trust account system and criteria for the use of funds under ~~subsection (1)~~ this section. The rules must contain clear guidelines regarding ~~forfeiture~~ the use of funds that ensure ~~restitution~~ payment under subsection (2) ~~but that:~~

~~(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and~~

~~(b) do~~ and that inhibit ~~any~~ an inmate's ability to deal in contraband or illegal acts within or outside the ~~correctional facility~~ state prison."

NEW SECTION. **Section 3. Prison inmate welfare account.** (1) There is an account in the state special revenue fund. The net proceeds from state prison inmate canteen purchases and inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the state prisons in proportion to the amount that each state prison contributed to the fund. The administrator of each state prison shall consult with the inmates about the use of the money allocated to the state prison and may use the money for the needs of the inmates and their families.

(3) For purposes of this section, "state prison" has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).

NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 1, and the provisions of Title 53, chapter 1, part 1, apply to [section 3].

- END -

FISCAL NOTE

Bill #: HB0134 **Title:** Revise disposition of funds held by or for state prison inmates

Primary Sponsor: Weiss, S **Status:** As Introduced

Sandy Weiss 1-24-03
Sponsor signature Date

Chuck Swysgood 1/23/03
Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
General Fund	$0	$0
Revenue:		
General Fund	$0	$0
Net Impact on General Fund Balance:	$0	$0

☐ Significant Local Gov. Impact	☐ Technical Concerns
☐ Included in the Executive Budget	☐ Significant Long-Term Impacts
☒ Dedicated Revenue Form Attached	☐ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

1. There will be no fiscal impact with this bill.
2. While the Department of Corrections "may" increase the administrative fee charged by 40 cents per month per account, after passage of this bill, there are no plans to utilize this increase in the upcoming biennium.
3. This bill will create a statutory appropriation and a new state special revenue account to be used to account for miscellaneous funds the department may accumulate from the canteen proceeds, inmate phone usage, proceeds from disposition of contraband and public money.

HB 134

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)
Revenues are generated by inmates of state correctional facilities and the funds would be utilized for their welfare.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?
Revenue is to be used only for the welfare of inmates in state correctional facilities.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)
Yes.

d) Does the need for this state special revenue provision still exist? _X_Yes ___No (Explain)

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)
A statutory appropriation is established to control expenditures.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)
Yes, public safety.

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)
Revenues and expenditures would be recorded on the state accounting system, which would provide efficiencies in tracking spending activity.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 14, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note:
Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 116, 1/8/2003; HB 134, 1/8/2003; HB 140, 1/8/2003
Executive Action: HB 116

HB 195 is the repeat offender bill based on the code of federal regulations (CFR's) that require the states to enact certain measures to ensure that repeat offenders receive certain sanctions. She laid out the following elements in the CFR's that deal with repeat offenders: a second or subsequent DUI offender must have a driver license suspension for one year; the vehicle must be impounded or have an ignition interlock installed following the term of suspension, and the third element deals with alcohol assessment and treatment.

REP. THOMAS suggested language stating that low value vehicles that are forfeited be scrapped. **REP. NOENNIG** stated his concern to REP. HARRIS that a Denver Boot would immobilize a vehicle, eventually need to be removed, and questioned the costs. **REP. HARRIS** stated that the costs of hauling a vehicle, slapping on a boot, or crushing the vehicle could be put onto the defendant.

{Tape: 2; Side: A; Approx. Time Counter: 425 - 447}

Closing by Sponsor:

REP. HARRIS closed on HB 140 stating this is the session to get tough on DUOS's along with an enormous budget crisis. He stated that this bill attempts to make a small solution by providing some non-incarceration tools for the prosecution.

HEARING ON HB 134

Sponsor: REP. SANDY WEISS, HD 13, Billings

Opening Statement by Sponsor:

REP. WEISS opened on HB 134 on behalf of the Department of Corrections (DOC). **Ms. Weiss** spoke of section 3 of the bill dealing with the Inmate Welfare Fund. She explained that this money is generated from the commissary and telephone contracts. The money is controlled by the inmate council in conjunction with the Warden who has veto power. She stated this money is used for things like a new gym, death bed visits, travel for funerals, and a recreation yard in Shelby. She explained the money is held in six different accounts around the state with no equity between men and women, or prison to prison. She stated this bill would ensure the funds are distributed equally amongst all Montana prisons.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 75}

Proponents' Testimony:

DIANA KOCH, Chief Legal Counsel, DOC, supported HB 134, and Section 2 specifically. She explained this section amends the existing statute to take care of inmate trust funds regarding how inmates do their banking. **Ms. Koch** stated the DOC wants inmates to use DOC's banking system for all their transactions to curtail extortion or bulldogging at the prisons. This bill allows DOC to take a percentage of every penney that comes into an inmate's account. It allows inmates to have money coming into their account and the prison takes 80 percent of what they make for costs of incarceration and other expenses. **Ms. Koch** stated DOC has a proposed policy to allow money to be taken out of inmate's accounts and distributed as follows: take out money for child support first and the rest for restitution, court fees, service costs and sanctions for destruction of property at the prison. Ms. Koch asked if the judge in one case had not ordered the DOC to take a third of the inmate's wages for victim restitution, would DOC be allowed to do so. **Ms. Koch** stated the question was answered by Justice Treiwieler stating the prison has no right to take money out of an inmate's account for restitution. This bill would allow the DOC to take money out of any inmate's account for restitution.

(juh07a01)
(juh07a02)

{Tape: 1; Side: B; Approx. Time Counter: 76 - 180}

Mike Mahoney, Warden, Montana State Prison (MSP), supported HB 134 stating this would give MSP the ability to take money out of the inmate's accounts for restitution costs. He emphasized that collecting money for restitution makes inmates accountable and responsible.

{Tape: 2; Side: B; Approx. Time Counter: 181 - 315}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RICE asked Warden Mahoney if this bill would change how DOC collects restitution. **Warden Mahoney** stated that because of recent Montana Supreme Court decisions, DOC is not secure in it's ability to garner wages for restitution and this bill would change that.

REP. NOENNIG asked Ms. Koch about the inmate trust account and the inmate welfare account. **Ms Koch** stated there are two different issues in HB 134, the inmate trust accounts and the inmate welfare funds. She explained sections 1 and 3 of the bill, the inmate welfare funds, change the accounting methods. She stated that at present, DOC holds the welfare funds in a fiduciary trust relationship for the inmates which is used for death bed visits, security to transport inmates to death bed visits, and prisoner's wages. The inmate council manages this money and the Warden has veto power. The bill presumes the how the inmate welfare money is spent will not change. **REP. NOENNIG** stated that the bill pretty much puts into statute what DOC presently is doing with the inmate welfare fund. **Ms. Koch** stated that is correct except the accounting method would change. Also, at present there are six inmate welfare funds, one in each prison facility. This bill would allow more equity and continuity of the money. **Warden Mahoney** stated the intent of HB 134 is to give DOC jurisdiction over multiple accounts and create one account. Each facility has an inmate council that can bring proposals to the DOC. **Warden Mahoney** explained that with the money in one pot, DOC can see the money is more equitably distributed.

{Tape: 2; Side: B; Approx. Time Counter: 316 - 510}
{Tape: 3; Side: A; Approx. Time Counter: 1 - 41}

CHAIRMAN SHOCKLEY asked Warden Mahoney about the relationship between the inmate council and the Warden's veto power. **Warden Mahoney** stated that he gets the final word but the inmates do have a voice in how there money is spent. **CHAIRMAN SHOCKLEY** asked about a proposed recreational (rec) facility that was to be built at Shelby. He stated that the prison felt the inmate welfare funds should be used to build the rec facility and the prisoners objected. **Warden Mahoney** responded that would be better answered by legal. **REP. RASER** asked **Rhonda Schaeffer, Bureau Fiscal Chief, DOC,** about the accounts and how this bill would affect them. **Ms. Schaeffer** replied that right now, all the trust account and inmate welfare funds are accounted for on the state system in a custodial account. **Ms. Schaeffer** explained this change, Section 3 of the bill, has to be done statutorily and would put the inmate welfare funds on the state system so DOC can see all the transactions that go in or out of the fund.

{Tape: 3; Side: A; Approx. Time Counter: 42 - 105}

REP. LANGE asked Ms. Koch about the ranking order of funds to be used for child support. **Ms. Koch** stated that restitution must first go to the victims, then to the crime victim's fund. Ms. Koch explained a scenario where an inmate had $100 in a personal

account. She stated that DOC would take some out for child support right away and then take out for restitution. Whatever was left would go to the inmate. **REP. LANGE** stated child support should be delineated to ensure it takes priority over other things. **Ms. Koch** stated DOC is planning to enact administrative rules with child support ranked first, restitution second. **REP. CLARK** asked about mismanagement of inmate funds. **Ms. Koch** responded this legislation addresses this and alleviates any potential problems regarding mismanagement by DOC of inmate funds.

Closing by Sponsor:

REP. WEISS closed on HB 134 stating we all have to be accountable for our actions, whether in prison or not, to pay for things like restitution and child support.

{Tape: 3; Side: A; Approx. Time Counter: 106 - 219}

HEARING ON HB 116

Sponsor: REP. CHRISTINE KAUFMANN, HD 53, Helena

Opening Statement by Sponsor:

REP. KAUFMANN opened on HB 116 for the Department of Justice (DOJ). She explained that the DOJ created a Domestic Violence Fatality Review Commission (Commission)in response to incidents involving women who were killed in domestic disputes in Montana. She stated that the Commission only works on cold cases, meaning cases that are not being litigated. She described the Commission as consisting of 14 members that include victims advocates, law enforcement professionals, criminal justice officials, child protective service specialists, and forensic and medical personnel. The Commission tries to look at Communities that have suffered domestic fatalities in order to prevent similar future incidents. She described the purpose of HB 116 as to ensure that the Commission has access to information they need. She emphasized the Commission would only go into communities in which they are invited.

EXHIBIT **(juh07a03)**

{Tape: 3; Side: A; Approx. Time Counter: 221 - 283}

EXHIBIT 1
DATE 1/14/01
HB 134

IN THE SUPREME COURT OF THE STATE OF MONTANA

FILED
OCT 22 2002
Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

No. 02-565

DANIEL R. VEGGE,

Petitioner,

v.

JAMES MacDONALD, Warden,

Respondent.

ORDER

RECEIVED
OCT 23 2002
DEPT. OF CORRECTIONS
LEGAL SERVICES BUREAU

Daniel R. Vegge has filed a petition for writ of habeas corpus. On September 13, 2002, this Court granted Vegge's application to proceed in forma pauperis and granted thirty days for the Respondent to file a response to the petition. That response has now been filed.

On November 3, 1998, Vegge was sentenced to a term of five years with the Department of Corrections for the offense of deceptive practices. He is currently retained at Crossroads Correctional Center. Vegge asserts that the prison has garnished his inmate account in the amount of $225 and forwarded the money for application to his restitution obligation. Vegge argues that the money was taken illegally because his sentencing judgment states that he shall pay restitution "upon any release on parole." Because he has not been released on parole, Vegge contends that the prison was without authority to withhold the sums for restitution. Therefore, Vegge contends that the State must either return the money or release him on parole.

Respondent argues that the money was not taken illegally, but even if it was, it would not entitle Vegge to habeas corpus relief. Respondent asserts that there is no connection between forfeiture of Vegge's money and his continued incarceration.

Whether or not Vegge's money was unlawfully taken, an issue which we do not resolve herein, he is not entitled to habeas corpus relief, which relief is available only if the

incarceration is illegal. Section 46-22-101, MCA; *State v. Sor-Lokken* (1991), 247 Mont. 343, 805 P.2d 1367. Vegge has not established that the an illegal taking of his money has invalidated his incarceration. Therefore,

IT IS HEREBY ORDERED that the petition for writ of habeas corpus is denied.

The Clerk is directed to mail a true copy hereof to Petitioner personally and to counsel of record for Respondent.

DATED this 22nd day of October, 2002.

Chief Justice

Justices

Justice Terry N. Trieweiler concurs as follows.

I agree that habeas corpus is not the appropriate remedy for the wrong complained of.

I also agree that neither the Department of Corrections nor Crossroads Correctional Center has any legal basis for taking Vegge's money. The unauthorized assertion of control over Vegge's money is the kind of act for which people are routinely sentenced to the Department of Corrections. It is ironic that the prison does not feel bound by the same laws which bind its inmates. However, Vegge's relief will have to be found by a proceeding other than habeas corpus.

DATED this 22 day of October 2002.

Justice Terry N. Trieweiler

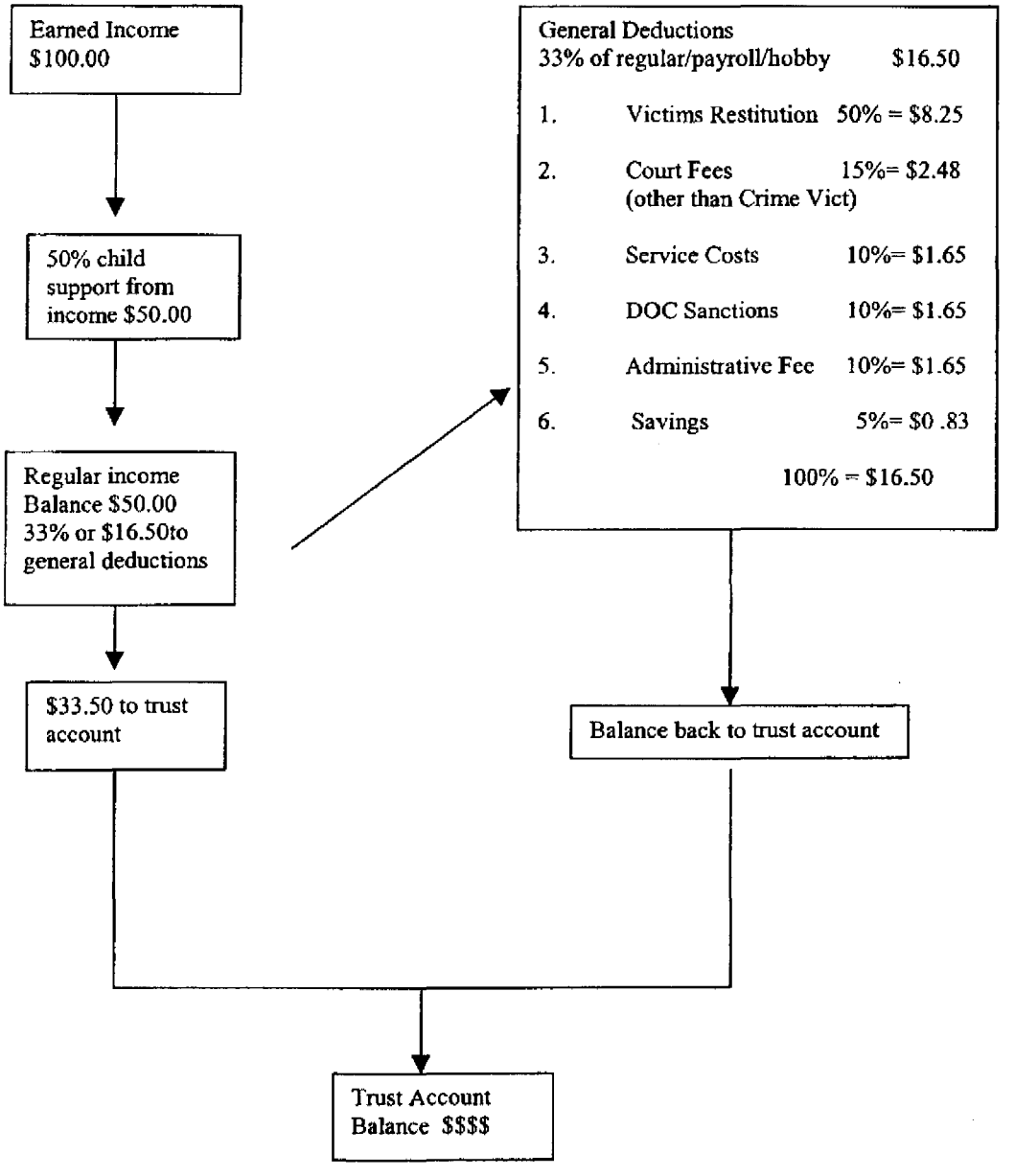
FILED

OCT 22 2002

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

EXHIBIT 2
DATE 1/14/01
HB 134

Example of income deductions with ratio scenerio:
1/13/03


Earned Income
$100.00
50% child support from income $50.00
Regular income Balance $50.00 33% or $16.50to general deductions
$33.50 to trust account
General Deductions
33% of regular/payroll/hobby $16.50
1. Victims Restitution 50% = $8.25
2. Court Fees 15%= $2.48 (other than Crime Vict)
3. Service Costs 10%= $1.65
4. DOC Sanctions 10%= $1.65
5. Administrative Fee 10%= $1.65
6. Savings 5%= $0 .83
100% = $16.50
Balance back to trust account
Trust Account Balance $$$$

Department of Corrections
Updated 12/13/2006

Revenue Classification

Classification	Money received	Eligible for Child Support Deduction	Eligible General Deduction	Eligible Medical Copay Deduction	How often Deduction will occur
Regular	Money received in reception County Jails Outside banks (inmates have money sent into facility) U.S. Treasury (Veterans, Indian affairs, tax returns Outside Payroll(money inmate earned prior to entering facility Insurance Dividends Family Legal money from attorney - case by case basis	No	Yes	Yes	Each time money is received
Payroll	Earned income - (paid through facility, MCE, Ranch, Industries, Vocational Education Programs) positions paid through Inmate Welfare.	Yes	Yes	Yes	Each time payroll is received
	PIE Program (Follow Federal guidelines for 80% deductions)	No	No	Yes	Each time payroll is received
Hobby	Earnings derived from the sale of hobby either by contract or through Inmate Hobby Shop located downtown. (charged 20% surcharge for expenses of selling items for them).	Yes	Yes	Yes	Each time hobby income is received
Indigent	Money given to inmates by DOC to purchase hygiene/legal items. Inmates must apply for indigent status monthly. See DOC policy xxxxx current DOC rates are $10.00 for MSP inmates $15.00 for MWP inmates	No	No	No	Never
Special Receipts	Refund reimbursements, non payroll DOC grievances (ie. Missing canteen reimbursements)	No	No	No	Never
Forced Savings	Balance of % deduction money after bills are paid. Dollars roll to savings.	No	No	No	Should not occur unless special circumstances (ie.DOC sanction?)
Transfer	Money to one account to another (MSP to regional or visa versa)	No	No	No	Deduction will have already been taken.

Notes:

CVC	Crime Victim Fund
DOC	Department of Corrections
MSP	Montana Womens Prison
MSP	Montana State Prison
MCE	Montana Correctional Enterprises

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/14/03

NAME	PRESENT	ABSENT	EXCUSED
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE Date 1/14/03

Bill No. HB 134 Sponsor(s) S. Weiss

PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Mike Mahoney	BSC	✓		
Diana Koch	DOC	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 22, 2003 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 243, 1/14/2003; HB 246, 1/14/2003; HB 255, 1/14/2003; HB 240, 1/14/2003
Executive Action: HB 234; HB 134

REP. PARKER took a point of personal privilege to suggest that if there are amendments prepared, they could be delivered early so the Committee could look over them. It was decided that they try it for a week; Mr. MacMaster will distribute the amendments and the Representatives will put them in their file; if a Representative doesn't want it distributed, Mr. MacMaster will keep it confidential.

{Tape: 3; Side: B; Approx. Time Counter: 24 - 90}

EXECUTIVE ACTION ON HB 134

Motion: **REP. CLARK** moved that **HB 134 DO PASS.**

Motion: **REP. SHOCKLEY** moved that **HB 134 BE AMENDED.**

{Tape: 3; Side: B; Approx. Time Counter: 92 - 154}

Discussion:

CHAIRMAN SHOCKLEY distributed an amendment and Mr. MacMaster explained it. He explained that there are different types of accounts for the inmates. One is an account were the inmate puts his/her own money in, and the other is an account that certain other sources put money in for the use of the inmates. As it stands, the warden has to consult with the inmates. The amendment will make it so the warden only has to get the consent of an inmate council.

EXHIBIT **(juh13a01)**

REP. LASZLOFFY asked if the council is the inmate's attorney.

REP. RICE asked if this removes the Warden's veto power. **CHAIRMAN SHOCKLEY** said that without the amendment, if the inmate council proposed buying baseballs, the warden could not veto it if he felt they need golf balls instead. He explained that both parties have to agree on the expenditures. **Ms. Koch** said the DOC does not object to this amendment.

{Tape: 3; Side: B; Approx. Time Counter: 155 - 181}

REP. NOENNIG voiced concerns that the money really doesn't belong to the inmates, but it is used for them. He was confused with conflicting input from the DOC. **REP. SHOCKLEY** said he gave the DOC a chance to speak out and they are in favor.

{Tape: 3; Side: B; Approx. Time Counter: 182 - 205}

REP. GALLUS asked Joe Williams, if the DOC acquiesced because it is good policy or for another reason. **Mr. Williams** said he would have a problem with inmates having veto power. He explained that the warden needs to have control over the institution. He said he would have to side the with absolute authority staying with the warden.

REP. GALLUS also stated that he opposed the amendment and that the warden should have the veto and decision-making authority.

{Tape: 3; Side: B; Approx. Time Counter: 206 - 257}

REP. NEWMAN opposed the amendment as well. He said that this money was not inmates' personal money, but for the benefit of the inmates. He was concerned with the language and stated that if they say "may with concurrence of inmate council" it will be interpreted by the supreme court to mean "must" and that creates an inmate veto power. He believed that is bad policy.

{Tape: 3; Side: B; Approx. Time Counter: 258 - 277}

CHAIRMAN SHOCKLEY said that this is a fairness issue. It is their money; they earn it. They conceive of it as their money. He stressed that it is not the taxpayers', or the warden's, money. If the warden wants to do something with their money, the inmates should have a say in how their money will be spent. He told of his experience when working on a ship; the crew's money goes into the mess and the captain eats what the crew wants. He posed that Warden Mahoney is analogous to the captain of the prison, and the inmates should have a say on how the money is spent.

{Tape: 3; Side: B; Approx. Time Counter: 278 - 313}

REP. NOENNIG stated that the money is not really the inmates' money. He said it ought to be up to the warden to decide how money is spent.

{Tape: 3; Side: B; Approx. Time Counter: 314 - 331}

Ms. Koch explained that she had misread the amendment as not giving the inmates a veto power. She said this gives inmates a veto and they do not wish them to have a veto. She agreed that the DOC should consult with the inmates about how the money is spent. She stressed that this is a symbolic suggestion that would have great repercussions with the inmate population. She said they oppose the amendment.

{Tape: 3; Side: B; Approx. Time Counter: 331 - 418}

CHAIRMAN SHOCKLEY spoke about the misuse of money in Shelby. **Ms. Koch** explained that in regard to Shelby, they built a nice indoor recreation center. The idea was that if there were fences around an area, the inmates could have an outdoor recreation yard. They posed the question to the inmates who agreed it was a good idea. The bills says that money won't be spent on something the DOC is mandated to provide.

REP. HARRIS said passing this amendment will create a mess, but he will vote for it anyway.

Vote: Motion to amend failed 2-16 with REP. HARRIS and CHAIRMAN SHOCKLEY voting aye by roll call vote.

Vote: Motion DO PASS HB 134 carried 18-0 by a voice vote.

EXHIBIT 1
DATE 1/22/03
HB 134

Amendments to House Bill No. 134
1st Reading Copy

Requested by Representative Jim Shockley

For the House Judiciary Committee

Prepared by John MacMaster
January 21, 2003 (2:20pm)

1. Page 3, line 26.
Strike: 'the inmates"
Insert: 'an inmate council"
Following: "and may"
Insert: ', with the concurrence of the council,"

- END -

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/22/03

NAME	PRESENT	ABSENT	EXCUSED
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE			
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 11/22/03 BILL NO 364 MOTION NO. _____
MOTION: Move to amend HB 364

NAME	AYE	NO	ABSENTEE
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY		✓	
REP. PAUL CLARK, VICE CHAIR MINORITY		✓	
REP. SCOTT SALES		✓	
REP. MIKE LANGE		✓	
REP. DIANE RICE		✓	
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY		✓	
REP. STEVE GALLUS		✓	
REP. JOHN PARKER		✓	
REP. HOLLY RASER		✓	
REP. MARK NOENNIG		✓	
REP. BRUCE MALCOLM		✓	
REP. BILL THOMAS		✓	
REP. RON STOKER		✓	
REP. GAIL GUTSCHE		✓	
REP. GEORGE EVERETT		✓	
REP. BRAD NEWMAN		✓	
REP. JIM SHOCKLEY, CHAIRMAN	✓		

2 16

HOUSE STANDING COMMITTEE REPORT

January 22, 2003

Mr. Speaker

We, your committee on **Judiciary** recommend that **House Bill 134** (first reading copy -- white) **do pass.**

Signed: _____
Representative Jim Shockley, Chair

- END -

Committee Vote:
Yes 18, No 0.

1/23

131251SC.hhn

Boy, Witt, Younkin, Mr. Speaker.
Total 99

Noes: None.
Total 0

Voted Absentee: Buzzas, Franklin, Hedges, Ayes.

Excused: None.
Total 0

Absent or not voting: Brueggeman.
Total 1

HB 134 - Representative Weiss moved **HB 134** do pass. Motion carried as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Macdje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrumpf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.
Total 98

Noes: Jayne.
Total 1

Voted Absentee: Buzzas, Franklin, Hedges, Ayes.

Excused: None.
Total 0

Absent or not voting: Fuchs.
Total 1

HB 234 - Representative Cohenour moved **HB 234** do pass. Motion carried as follows:

Ayes: Ballantyne, Becker, Bergren, Bixby, Bookout-Reinicke, Branae, Brueggeman, Buzzas, Callahan, Carney, P. Clark, Cohenour, Cyr, Dickenson, Dowell, Erickson, Facey, Forrester, Franklin, Fritz, Gallik, Galvin-Halcro, Gibson, Gillan, Gutsche, Haines, Harris, Jacobson, Jent, Juneau, Kaufmann, Keane, Lake, Lenhart, Lewis, Lindeen, Musgrove, Newman, Noennig, Parker, Raser, Roberts, Schrumpf, Small-Eastman, Smith, Thomas, Wagman, Wanzenried, Weiss, Wilson, Windy Boy, Younkin.
Total 52

Noes: Andersen, Balyeat, Barrett, Bitney, D. Brown, R. Brown, E. Clark, Devlin, Everett, Fisher, Fuchs, Gallus, Golie, Hawk, Hedges, Hurwitz, Jackson, Jayne, Kasten, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman,

The following House joint resolution was introduced, read first time, and referred to committee:

HJR 15, introduced by Wagman, Andersen, Barrett, Brueggeman, P. Clark, Fisher, Fuchs, Haines, Hawk, Hurwitz, Jackson, Lake, Lambert, Lange, Lawson, Lehman, Lewis, Macdje, Mendenhall, Pattison, Rice, Ripley, Roberts, Rome, Ross, Sales, Schrumpf, Sinrud, Steinbeisser, Stoker, B. Thomas, referred to Agriculture.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

HB 134 passed as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Macdje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrumpf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.
Total 98

Noes: None.
Total 0

Excused: Peterson.
Total 1

Absent or not voting: Buzzas.
Total 1

HB 197 passed as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Macdje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrumpf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.
Total 99

Noes: None.
Total 0

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE-CHAIRMAN DAN McGEE**, on March 11, 2003 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

- Hearing & Date Posted: HB 66, 3/5/2003; HB 40, 3/5/2003; HB 155, 3/5/2003; HB 199, 3/5/2003; HB 166, 3/5/2003; HB 134, 3/5/2003
  Executive Action: HB 161, HB 134, HB 299

HEARING ON HB 134

Sponsor: **Rep. Sandy Weiss, HD 13, Billings.**

Proponents: **Diana Koch, Chief Legal Counsel, Department of Corrections**
Rhonda Schaffer, Fiscal Bureau Chief, Department of Corrections,
Mike Mahoney, Warden, Montana State Prison

Opponents: **None.**

Opening Statement by Sponsor:

Rep. Weiss is carrying HB 134 on behalf of the DOC. **Rep. Weiss** explained HB 134 revises the accounting system of the DOC and addresses two issues: inmate welfare funds and inmate trust accounts. Rep. Weiss explained inmate welfare funds are generated by inmate commissary purchases and money generated from the facility telephone contracts. The funds are used as gate money up to $300 that an inmate receives when they leave the institution, institutional projects at prisons, family death bed visits or travel for a funeral. Each facility is responsible for accounting for these funds and each facility inmate's counsel decides how to spend the money, with the warden having veto power. Currently, the funds are maintained in six separate facilities around the state. Consequently, there is no consistency from facility to facility. Since there are fewer women in the women's prison, and women tend to buy less from the commissary, they tend to accumulate less money. If the accounting method is changed and the DOC administers the funds, there will be consistency and equity among the facilities. Wardens will be able to exercise more guardianship power to help inmates decide how to spend the money to the betterment of the inmate population.

Rep. Weiss explained the inmate trust account, money that a prisoner earns working at the prison or money an inmate receives from outside sources, should be monitored by the DOC. This will make it more difficult to inmates to engage in illegal transactions. The bill will allow the DOC to clarify and establish the priorities of deduction from inmate accounts, deduct dollars for child support, restitution, or court and prison ordered fees and costs. DOC has a plan for administrative rules which will provide a basis for taking a percentage of money from an inmate's account every month, and pay that money to child support, victims, or fines.

Proponents' Testimony:

Diana Koch, Chief Legal Counsel for the Department of Corrections, explained there are two different types of money which the bill deals with. Regarding inmate accounts, the current statute says DOC will take everything in an inmate's account over $200. Inmates are not stupid on this issue and will make sure there is nothing in their accounts over $200. This bill will remedy the situation by saying it does not matter how much money is in your account, we are going to take a certain percentage. Therefore, an inmate with a financial obligation will pay every month. There is a Supreme Court opinion, which was unpublished, that deal with taking restitution out of an inmate's account. In a dissenting opinion by Justice Trieweiler, he stated there was no statutory authority to take any money out of an inmate's account to pay toward restitution to victims. Justice Trieweiler accused the Department of Corrections of removing money from inmates' accounts illegally. This bill will give the Department of Corrections that statutory authority. The other funds the bill deals with come from commissary and the telephone contracts. Currently, DOC accounts for the money using a trust theory. The money either has to go into the general fund and is accounted for as a trust. This removes flexibility from the way the wardens can use the money. The bill proposes to account for this money differently to give the wardens more flexibility in using this money to benefit the inmates as a whole.

Rhonda Schaffer, Fiscal Bureau Chief for the Department of Corrections, stated HB 134 will accomplish two things. It will set a priority of deductions for individual inmate accounts. This will allow DOC to use a consistent set of deduction criteria for each inmate. **Ms. Schaffer** submitted a flow chart depicting the deduction process **(jus51a06)**. Previous language allowed deductions for balances over $200. The new language will allow deductions each time an offender receives regular revenue. DOC will adopt administrative rules to provide a basis to consistently garnish offender income owed to victims, children, and the government. The net activity of the inmate trust accounts and the inmate welfare fund are recorded at the end of each year in a trust account. Section 3 of HB 134 will take the inmate welfare money and place it in a special revenue account on the state-wide budgeting and accounting system. This will mean all the spending activity and revenue will be tracked on the state's general ledger system. They are asking for a special revenue account since the amount will constantly change depending on the number of inmates and the revenue they have.

Mike Mahoney, Warden, Montana State Prison, feels there are three key points to the bill. First, it provides continuity to the inmate welfare fund in terms of its practical application with three regional prisons, a private prison, and two state-operated prisons. This will create uniformity in how these funds are utilized for the benefit of the inmate population. The second key component, as previously mentioned, is the bill will enable the department to invoke rules and supervision of the fees in such a manner as to minimize extortion and "bulldogging" among the inmate population. This is a key security issue for management at each facility. Thirdly, it will enable the department to put into place a mechanism where they can initiate a process where members can begin paying on court-ordered fines, restitution, and child support. The $200 cap is ineffective as the inmates will make sure they do not have over $200 in their account. Although **Warden Mahoney** does not believe "bulldogging" can be eliminated, this will certainly help control it.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **Diana Koch** where the inmates' money comes from and whether there was a maximum amount they can have in an account, and if an inmate could have an account that they are unaware of. In addition, **SEN. CROMLEY** wanted to know how they arrive at the percentages.

Ms. Koch informed **SEN. CROMLEY** there is no maximum amount an inmate can have in an account. Most prison jobs pay $1.29 per day. There are some jobs in prison industries that pay more. The amount of money an inmate earns is quite minimal. Sometimes, they have money coming in from outside sources, such as veteran disability or relatives. There are statutes that say inmates are not allowed to have outside accounts, and they are trying to find those outside accounts and close them down. In addressing the percentages, **Ms. Koch** stated there was a committee within DOC that worked on developing the percentages. The result was the system depicted on Exhibit 6. If an inmate is indigent, DOC has to provide certain items such as toiletries, stamps, and legal materials.

(Tape : 4; Side : A)

SEN. CROMLEY does not see any limits set in the bill, and he sees that all an inmate's money could be taken.

Ms. Koch explained the bill says DOC can take money according to administrative rule. DOC anticipates enacting these percentages in administrative rule after public comment and public hearing.

SEN. MANGAN understands the need for the special revenue account, and asked **Ms. Schaeffer** to explain the need for the statutory appropriation and how that will work for the inmate welfare account.

Ms. Schaeffer explained the statutory appropriation that would be used and any expenditures that would go through the account would be approved by the Warden. These expenses could include items such as a new gym floor or funeral expenses.

SEN. MANGAN stated they are setting up a special revenue account for that money, which, he assumes, the DOC will have access to. **SEN. MANGAN** is struggling as to why they need a statutory appropriation as well as a special revenue account.

Ms. Schaeffer re-referred the question to **Ross Swanson, Administrator for Montana Correctional Enterprises**, who testified he believes the statutory appropriation for the special revenue fund is similar to what they do for their proprietary funds. Basically, they get authority from the legislature that allows them to expend the monies against that. In this case, there will be an amount of authority, and as expenditures are made, it will go against that expenditure and be tracked.

SEN. MANGAN asked about the trust account system, commenting that he feels it is wonderful to see that child support is paid, and wondered how that money is then paid.

Ms. Schaeffer explained that currently there is a separate system that keeps track of that money, and it is not through a state warrant. This is part of their proposal.
SEN. MANGAN asked if the payment made to the third party from the inmate trust account would be made by a state warrant.

Ms. Schaeffer explained that is a separate system and has separate checks.

SEN. MANGAN asked where the money from canteen purchases and inmate telephone use is currently kept.

Ms. Schaeffer replied the money is kept in the bank account recorded on the state treasury and is called a trust account and is an 07 account rather than an 02 account.

Closing by Sponsor:

Rep. Weiss stated everyone has to be responsible for their actions, even if a person is incarcerated. The changes made to the law in HB 134 head in that direction. **Rep. Weiss** asked for a do pass recommendation from the Committee.

EXECUTIVE ACTION ON HB 161

Motion: SEN. MANGAN moved **DO CONCUR ON HB 161.**

Motion: SEN. McGEE moved the **amendment HB016102.avl BE ADOPTED. (jus51a07).**

Discussion:

Ms. Lane explained the amendment provides for written waiver be signed upon the advice of an attorney. The amendment also strikes language on line 16 which is redundant with language on line 27.

Vote: SEN. McGEE's motion **TO ADOPT amendment HB015102.avl carried UNANIMOUSLY.**

Motion: SEN. MANGAN moved **DO CONCUR AS AMENDED ON HB 161.**

Discussion:

SEN. PERRY asked if there was a provision for a youth to sign a waiver without the advise of an attorney.

Ms. Lane explained that as the statute currently reads, it requires the advice of an attorney before waiving the right to a hearing. In speaking with **Diana Koch** of the Department of Corrections, **Ms. Koch** explained she was routinely asked to speak with youth when that youth was about to waive rights. **Ms. Lane** feels it is an important decision to waive a right to a hearing and, therefore, the youth is not allowed to waive that right without speaking to an attorney.

Vote: SEN. MANGAN's motion **HB 161 BE CONCURRED IN AS AMENDED carried UNANIMOUSLY. Senator Zook** will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 134

Motion: **SEN. MANGAN** moved **HB 134 BE CONCURRED IN.**

Motion: **SEN. CROMLEY** moved **amendment HB013402.ajm BE ADOPTED.** [illegible] **(jus51a08).**

Discussion:

Ms. Lane explained the amendment is a coordination instruction prepared by **John McMaster. Mr. McMaster** sent a message stating **Rep. Raser** will want this amendment because HB 134 conflicts with HB 453. **Ms. Lane's** understanding is that **Ms. Koch** has seen the amendment and has agreed to the amendment.

CHAIRMAN GRIMES indicated the amendment adds an inmate's medical and dental expenses, as well as costs of incarceration.

Ms. Koch reviewed the amendment, stated she had discussed the amendment with **Rep. Raser,** and agreed this would be a good amendment.

Ms. Lane explained this is a coordination instruction and New Section 5 states the coordination instruction only takes effect if both bills pass. If both bills pass, it would not be possible for the Code Commissioner to codify the two bills without conflict. This will take care of that conflict.

Vote: **SEN. CROMLEY's** motion that **amendment HB013402.ajl BE CONCURRED IN carried UNANIMOUSLY. Note: Amendment HB013403.avl** was delivered to the Committee Secretary later that afternoon. [illegible] **(jus51a09).**

Motion: **SEN. CROMLEY** moved **HB 134 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. CROMLEY understands that they are taking it on faith that the rules will limit the deductions. As he reads the statute, everything could be taken out for service costs or DOC sanctions.

Ms. Koch explained the administrative rules have to go through the public comment process and public hearing process. It will not be possible for DOC to pass administrative rules that will abrogate the intent of the Legislature. It is somewhat a measure of faith, but it is more a measure of the rulemaking process.

SEN. CROMLEY did not see any intent to limit in the bill. **SEN. CROMLEY** sees the intent to take funds, but no intent to limit the amount being taken.

Ms. Koch stated if it is possible to insert more language into the bill to clarify the intent, she would consider it a friendly amendment.

CHAIRMAN GRIMES asked she would approve of language being inserted on page 2, line 20, inserting "a portion of the".

Ms. Koch agreed that proposed amendment would clarify the intent.

SEN. McGEE asked if the proposed rules would be presented to the Law and Justice Interim Committee.

Ms. Lane added that Legislative Services staff reviews all rule proposed by an agency, and during the interim, a summary of those rules are given to the appropriate interim committees. If there are concerns, they discuss the rules with the agency.

Ms. Koch added the rules must be submitted to the bill's sponsor for review.

Motion: **SEN. CROMLEY** moved to insert "a portion of the" on page 2, line 20, following the word "use".

Vote: **SEN. CROMLEY's** motion **carried UNANIMOUSLY.**

Motion: **SEN. CROMLEY** moved **HB 134 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. O'NEIL asked if inmates can send money from their account to friends and family outside of the prison and how the money would be transferred. Also, **SEN. O'NEIL** asked if there was a charge for this service, and if the account accumulates interest.

Ms. Koch replied they can send money out of their account. Some inmates send money home or purchase books by mail. These are not interest-bearing accounts. The system has the ability to write the check when an inmate requests money be sent somewhere. There is no charge to the inmate for this service.

SEN. PERRY stated the bill talks about statutorily appropriated funds, and wanted to know how many dollars in funds it is referring to.

Ms. Koch believes what happens in the statutory appropriation is it is the amount they expect to come into the fund for the biennium. Ms. Koch quoted an amount of $358,210 as all the money held in trust for offenders in fiscal year 2002. This includes money in inmate accounts, as well as the inmate welfare fund. These funds are currently co-mingled, and HB 134 is attempting to separate these funds. The inmate offender funds is $260,000.

SEN. PERRY inquired if an inmate could have a checking account in a private bank outside of the prison.

Ms. Koch replied they are not supposed to have these accounts.

SEN. PERRY stated current law provides that in order to send money out of, or receive money at, the facility using the trust account system, there a limit to the sources from which money can be received from and deposited in the facility trust account system. **SEN. PERRY** would like to know if an inmate can have other funds be deposited in the trust account to pay for medical or dental expenses.

Ms. Koch replied if an inmate needs to have a bank account for other things, like a business they still operate for example, they need to get special permission from the warden to have an account on the outside. They will not take a percentage of all money that comes into the fund, because some monies will be exempt from collection. For instance, money received from the Native American Tribes will be exempt.

(Tape : 4; Side : B)

SEN. CURTISS asked about monetary sanctions imposed by a state prison.

Ms. Koch anticipates that if an inmate floods his cell and tears up his cell, there could be a monetary sanction levied to pay for the damage to the cell.

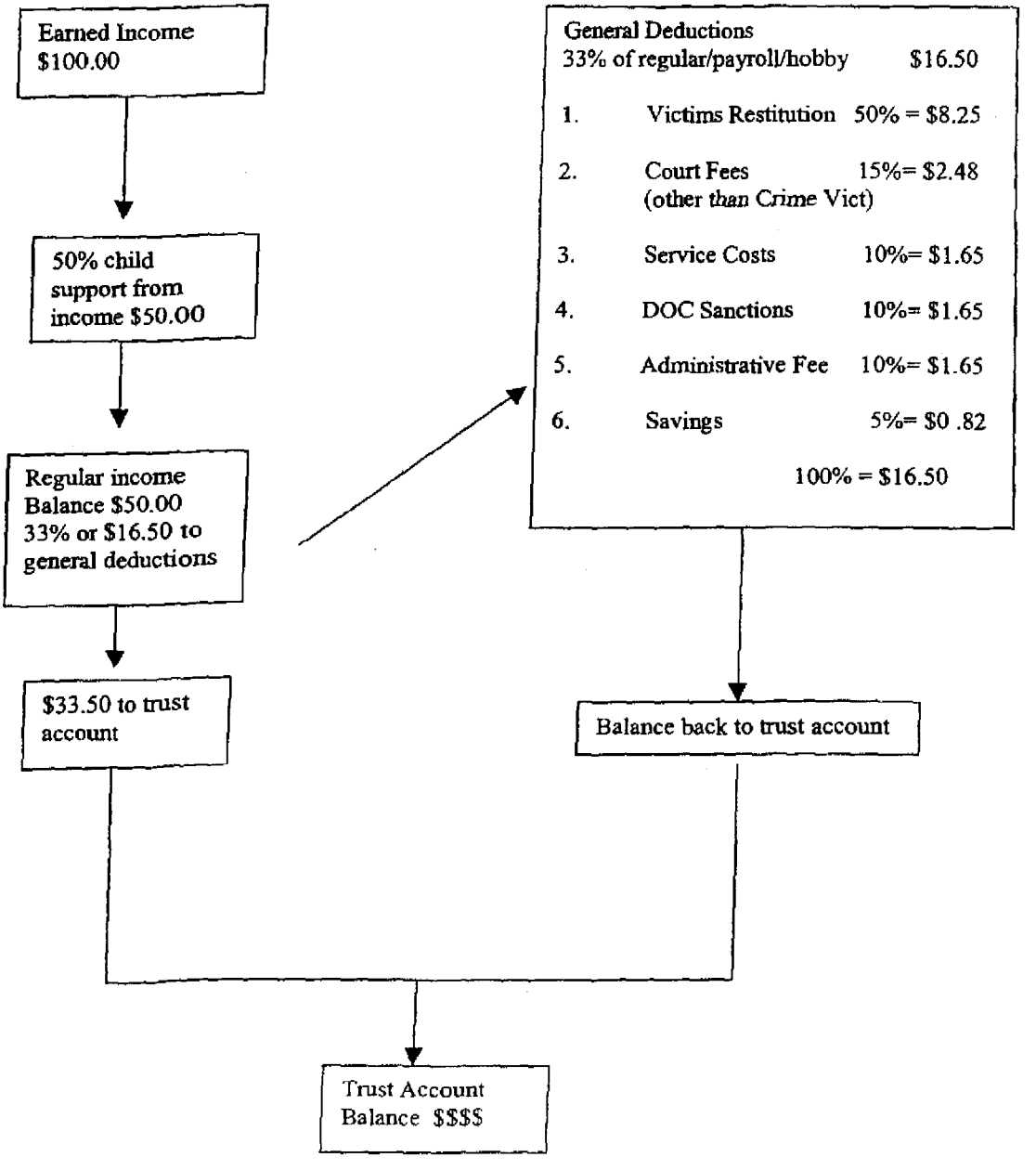
SEN. CURTISS realized the amounts for damages would vary, but asked if penalties would vary between facilities.

Ms. Koch explained the money they collected would be for damages. Typically, the amount assessed would be in excess of an inmate's ability to pay, so they would just collect a percentage. There are guidelines at the prisons for sanctions to make the offender more accountable.

Vote: SEN. CROMLEY's motion **HB 134 BE CONCURRED IN AS AMENDED carried UNANIMOUSLY.**

SENATE JUDICIARY
Exhibit No. 6
Date 3 11 03
Bill No. HB134

Example of income deductions with ratio scenerio:
1/13/03


Earned Income
$100.00
50% child support from income $50.00
Regular income Balance $50.00 33% or $16.50 to general deductions
$33.50 to trust account
General Deductions
33% of regular/payroll/hobby $16.50
1. Victims Restitution 50% = $8.25
2. Court Fees 15%= $2.48
(other than Crime Vict)
3. Service Costs 10%= $1.65
4. DOC Sanctions 10%= $1.65
5. Administrative Fee 10%= $1.65
6. Savings 5%= $0 .82
100% = $16.50
Balance back to trust account
Trust Account
Balance $$$$

SENATE JUDICIARY
Exhibit No. 8
Date 3.11.03
Bill No. HB134

Amendments to House Bill No. 134
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by John MacMaster
February 4, 2003 (2:47pm)

1. Page 2, line 24.
Strike: "and"

2. Page 2, line 25.
Following: line 24
Insert: "(d) payment for the inmate's medical and dental expenses and costs of incarceration; and"
Renumber: subsequent subsection

3. Page 4, line 3.
Insert: "NEW SECTION. **Section 5. Coordination instruction.** If House Bill No. 453 and [section 2 of this act] are both passed and approved, then the amendments to subsections (1) and (2) of section 53-1-107 contained in House Bill No. 453 are void."

- END -

SENATE JUDICIARY
Exhibit No. 9
Date 3.11.03
Bill No. HB134

Amendments to House Bill No. 134
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 11, 2003 (2:58pm)

1. Page 2, line 20.
Following: "use"
Insert: "a portion of the"

2. Page 2, line 24.
Strike: "and"

3. Page 2, line 25.
Following: line 24
Insert: "(d) pay for the inmate's medical and dental expenses and costs of incarceration; and"
Renumber: subsequent subsection

4. Page 4, line 3.
Insert: "NEW SECTION. **Section 5. Coordination instruction.** If House Bill No. 453 and [section 2 of this act], amending 53-1-107, are both passed and approved, then the amendments to subsections (1) and (2) of 53-1-107 contained in House Bill No. 453 are void."

- END -

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-11-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

DATE March 11 - 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 40 - HB 66 - HB 134 - HB 155 HB 199

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Dan Smith	3310	DA	66		✓
Mike Malloy	846-3320	DOC	134		
Pam Bucy	5790	AG's office	HB199 HB40	✓	
Chris Tweeten	1380	AG Office	HB66	✓	
Kevin Braun	41658	DOLI	66		✓
Amy Pfeifer	443893	DPHHS/CSED	HB66		✓
Elaine Linaudy	444-3376	SOS	HB155	✓	
Dave Ohler	444-5682	Revenue	HB66		—
Marty Tuttle	841-2706	Commerce	HB66		—
DIANA L. KOCH	444-9593	DOC	HB66 HB134	✓	✓
Rhonda Schaffer	444-4939	MDOC	HB134	✓	
Ken Dove	670-1098	MPPA	HB199 HB40	✓ ✓	
John North	444-2018	DEQ	HB66		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE STANDING COMMITTEE REPORT

March 11, 2003

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 134** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Senator Duane Grimes, Chair*

To be carried by Senator Brent Cromley

And, that such amendments read:

1. Page 2, line 20.
Following: "use"
Insert: "a portion of the"

2. Page 2, line 24.
Strike: "and"

3. Page 2, line 25.
Following: line 24
Insert: "(d) pay for the inmate's medical and dental expenses and costs of incarceration; and"
Renumber: subsequent subsection

4. Page 4, line 3.
Insert: "NEW SECTION. **Section 5. Coordination instruction.** If House Bill No. 453 and [section 2 of this act], amending 53-1-107, are both passed and approved, then the amendments to subsections (1) and (2) of 53-1-107 contained in House Bill No. 453 are void."

- END -

Committee Vote:
Yes 9, No 0.

511604SC.sjo

Second Reading - Committee of Whole

Senator Harrington present at this time.

HB 428 - Senator Shea moved **HB 428**, as amended, be concurred in. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Black, Butcher, Cobb, Cocchiarella, Cooney, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Kitzenberg, Laible, Mahlum, Mangan, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Wheat, Zook, Mr. President.
Total 44

Nays: Bohlinger, Johnson, Story, Tropila.
Total 4

Absent or not voting: None.
Total 0

Excused: Cromley, McCarthy.
Total 2

Senator Cobb excused at this time.

HB 134 - Senator Mangan moved **HB 134** be concurred in. Motion carried unanimously.

Senator Thomas moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Keenan in the chair. Chairman Schmidt moved the Committee of the Whole report be adopted. Report adopted unanimously.

MOTIONS

HB 105 - Senator Thomas moved **HB 105** be taken from third reading and rereferred to the committee on Highways and Transportation. Motion carried.

ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 8:00 a.m., Saturday, March 15, 2003. Motion carried.

Senate adjourned at 2:10 p.m.

ROSANA SKELTON
Secretary of the Senate

BOB KEENAN
President of the Senate

HB 126 - Senator D. Ryan moved **HB 126** be concurred in. Motion carried with Senator O'Neil voting nay.

Senator Thomas moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Keenan in the chair. Chairman Grimes moved the Committee of the Whole report be adopted. Report adopted unanimously.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

HB 134, as amended by the Senate, concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 47

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cobb, McCarthy, Shea.
Total 3

ANNOUNCEMENTS

Senator Stapleton introduced the Senate pages for the week, gave a brief overview of their activities and future plans, and thanked them for their work through the week.

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 1:00 p.m., Monday, March 17, 2003. Motion carried.

Senate adjourned at 10:30 a.m.

ROSANA SKELTON
Secretary of the Senate

BOB KEENAN
President of the Senate

APPROVED BY COMM ON JUDICIARY

HOUSE BILL NO. 134

INTRODUCED BY WEISS

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DISPOSITION OF FUNDS HELD BY OR FOR THE BENEFIT OF STATE PRISON INMATES; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 53-1-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; [section 3]; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana

to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 2. Section 53-1-107, MCA, is amended to read:

"53-1-107. ~~Limits on inmate~~ Inmate financial transactions and trust account system. (1) An inmate of ~~the Montana~~ a state prison ~~in Deer Lodge or the women's prison in Billings~~, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v), shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. ~~If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration.~~ The department may charge an inmate a minimum fee, not to exceed ~~$1.60~~ $2 each month, to administer the inmate's account.

(2) The department may, consistent with administrative rules adopted by the department, use A PORTION OF THE funds in an inmate's account to:

(a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;

(b) satisfy court-ordered child support;

(c) satisfy court-ordered fines, fees, or costs; ~~and~~

(D) PAY FOR THE INMATE'S MEDICAL AND DENTAL EXPENSES AND COSTS OF INCARCERATION; AND

~~(d)~~(E) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.

~~(2)~~(3) (a) Money ~~forfeited~~ taken under subsection ~~(1) to~~ (2) for the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If ~~the inmate's sentence did not provide for the payment of restitution or if~~ there is a balance of money in the inmate's account after ~~restitution has been paid~~ payments under subsection (2)~~(a), money forfeited under subsection (1) must be applied to the inmate's costs of incarceration~~, the department may allow the balance to accumulate in a savings subaccount for the inmate.

~~(3)~~(4) The department shall adopt rules establishing ~~criteria for forfeiture~~ the prison inmate trust account system and criteria for the use of funds under ~~subsection (1)~~ this section. The rules must contain clear guidelines regarding ~~forfeiture~~ the use of funds that ensure ~~restitution~~ payment under subsection (2) ~~but that:~~

~~(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and~~

~~(b) do~~ and that inhibit ~~any~~ an inmate's ability to deal in contraband or illegal acts within or outside the ~~correctional facility~~ state prison."

NEW SECTION. **Section 3. Prison inmate welfare account.** (1) There is an account in the state special revenue fund. The net proceeds from state prison inmate canteen purchases and inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the state prisons in proportion to the amount that each state prison contributed to the fund. The administrator of each state prison shall consult with the inmates about the use of the money allocated to the state prison and may use the money for the needs of the inmates and their families.

(3) For purposes of this section, "state prison" has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).

NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 1, and the provisions of Title 53, chapter 1, part 1, apply to [section 3].

NEW SECTION. **SECTION 5. COORDINATION INSTRUCTION.** IF HOUSE BILL NO. 453 AND [SECTION 2 OF THIS ACT], AMENDING 53-1-107, ARE BOTH PASSED AND APPROVED, THEN THE AMENDMENTS TO SUBSECTIONS (1) AND (2) OF 53-1-107 CONTAINED IN HOUSE BILL NO. 453 ARE VOID.

- END -

HOUSE BILL NO. 134

INTRODUCED BY WEISS

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DISPOSITION OF FUNDS HELD BY OR FOR THE BENEFIT OF STATE PRISON INMATES; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 53-1-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; [section 3]; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana

to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 2. Section 53-1-107, MCA, is amended to read:

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(2) The department may, consistent with administrative rules adopted by the department, use A PORTION OF THE funds in an inmate's account to:

(a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;

(b) satisfy court-ordered child support;

(c) satisfy court-ordered fines, fees, or costs; ~~and~~

(D) PAY FOR THE INMATE'S MEDICAL AND DENTAL EXPENSES AND COSTS OF INCARCERATION; AND

~~(d)~~(E) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.

~~(2)~~(3) (a) Money ~~forfeited~~ taken under subsection ~~(1) to~~ (2) for the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If ~~the inmate's sentence did not provide for the payment of restitution or if~~ there is a balance of money in the inmate's account after ~~restitution has been paid~~ payments under subsection (2)~~(a), money forfeited under subsection (1) must be applied to the inmate's costs of incarceration~~, the department may allow the balance to accumulate in a savings subaccount for the inmate.

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~~(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and~~

~~(b) do~~ and that inhibit ~~any~~ an inmate's ability to deal in contraband or illegal acts within or outside the ~~correctional facility~~ state prison."

NEW SECTION. **Section 3. Prison inmate welfare account.** (1) There is an account in the state special revenue fund. The net proceeds from state prison inmate canteen purchases and inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the state prisons in proportion to the amount that each state prison contributed to the fund. The administrator of each state prison shall consult with the inmates about the use of the money allocated to the state prison and may use the money for the needs of the inmates and their families.

(3) For purposes of this section, "state prison" has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).

NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 1, and the provisions of Title 53, chapter 1, part 1, apply to [section 3].

NEW SECTION. **SECTION 5. COORDINATION INSTRUCTION.** IF HOUSE BILL NO. 453 AND [SECTION 2 OF THIS ACT], AMENDING 53-1-107, ARE BOTH PASSED AND APPROVED, THEN THE AMENDMENTS TO SUBSECTIONS (1) AND (2) OF 53-1-107 CONTAINED IN HOUSE BILL NO. 453 ARE VOID.

- END -

Total 6

Voted Absentee: Facey, Windy Boy, Ayes.

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 127 - Senate Amendments - Representative Fritz moved Senate amendments to **HB 127** be concurred in. Motion carried as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrumpf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.
Total 99

Noes: Gallik.
Total 1

Voted Absentee: Facey, Windy Boy, Ayes.

Excused: None.
Total 0

Absent or not voting: None.
Total 0

2nd Reading Senate Amendments Concurred.

HB 134 - Senate Amendments - Representative Weiss moved Senate amendments to **HB 134** be concurred in. Motion carried as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Jackson, Jacobson, Jayne, Jent, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrumpf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.
Total 95

Noes: Bixby, Juneau.
Total 2

Voted Absentee: Facey, Windy Boy, Ayes.

Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.
Total 98

Noes: Gallus, Sales.
Total 2

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 134, as amended by the Senate, passed as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jayne, Jent, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrumpf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.
Total 99

Noes: Juneau.
Total 1

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 145, as amended by the Senate, passed as follows:

Ayes: Andersen, Ballantyne, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Schrumpf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.
Total 97

Noes: Balyeat, R. Brown, Sales.
Total 3

Excused: None.

AN ACT REVISING THE DISPOSITION OF FUNDS HELD BY OR FOR THE BENEFIT OF STATE PRISON INMATES; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 53-1-107, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; [section 3]; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state

treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 2. Section 53-1-107, MCA, is amended to read:

"**53-1-107. ~~Limits on inmate~~ Inmate financial transactions and trust account system.** (1) An inmate of ~~the Montana~~ a state prison ~~in Deer Lodge or the women's prison in Billings~~, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v), shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. ~~If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration.~~ The department may charge an inmate a minimum fee, not to exceed ~~$1.60~~ $2 each month, to administer the inmate's account.

(2) The department may, consistent with administrative rules adopted by the department, use a portion of the funds in an inmate's account to:

(a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;

(b) satisfy court-ordered child support;

(c) satisfy court-ordered fines, fees, or costs;

(d) pay for the inmate's medical and dental expenses and costs of incarceration; and

(e) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.

~~(2)~~(3) (a) Money ~~forfeited~~ taken under subsection ~~(1) to~~ (2) for the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If ~~the inmate's sentence did not provide for the payment of restitution or if~~ there is a balance of money in the inmate's account after ~~restitution has been paid~~ payments under subsection (2)~~(a), money forfeited under subsection (1) must be applied to the inmate's costs of incarceration~~, the department may allow the balance to accumulate in a savings subaccount for the inmate.

~~(3)~~(4) The department shall adopt rules establishing ~~criteria for forfeiture~~ the prison inmate trust account system and criteria for the use of funds under ~~subsection (1)~~ this section. The rules must contain clear guidelines regarding ~~forfeiture~~ the use of funds that ensure ~~restitution~~ payment under subsection (2) ~~but that:~~

~~(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and~~

~~(b) do~~ and that inhibit ~~any~~ an inmate's ability to deal in contraband or illegal acts within or outside the ~~correctional facility~~ state prison."

Section 3. Prison inmate welfare account. (1) There is an account in the state special revenue fund. The net proceeds from state prison inmate canteen purchases and inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the state prisons in proportion to the amount that each state prison contributed to the fund. The administrator of each state prison shall consult with the inmates about the use of the money allocated to the state prison and may use the money for the needs of the inmates and their families.

(3) For purposes of this section, "state prison" has the meaning provided in 53-30-101(3)(c)(i) through

(3)(c)(iii) and (3)(c)(v).

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 1, and the provisions of Title 53, chapter 1, part 1, apply to [section 3].

Section 5. Coordination instruction. If House Bill No. 453 and [section 2 of this act], amending 53-1-107, are both passed and approved, then the amendments to subsections (1) and (2) of 53-1-107 contained in House Bill No. 453 are void.

- END -